REMARKS

The following remarks are made in response to the Office Action mailed July 19, 2005.

Claims 2-12 and 14-24 are pending in the application. Claims 2 and 14 have been amended into independent form incorporating therein the limitations of claims 1 and 13, respectively. Claims 1 and 13 have been cancelled. Claims 8 and 11 have been amended to depend from claim 2, and claims 20 and 23 have been amended to depend from claim 14. Applicant respectfully requests reconsideration of the application in view of the following remarks.

The Claims are Patentable Over the Dunne and Damschroder References

Claims 1, 8-11, 13 and 20-23 were rejected under 35 U.S.C. §102(e) as being anticipated by Dunne (U.S. Pat. App. Publ. No. US2005/0075962), and claims 2-7, 12, 14-19 and 24 were rejected as being unpatentable under 35 U.S.C. §103(a) over Dunne in view of Damschroder (U.S. Pat. App. Publ. No. US2003/0088492). Reconsideration of these rejections is respectfully requested.

Claims 1 and 13 have been cancelled. Claims 2 and 14 have been amended into independent form to incorporate therein the limitations of claims 1 and 13, respectively. As amended herein, claims 3-12 and 15-24 depend from claims 2 and 14, respectively. It is submitted that claims 2-12 and 14-24 are patentable over the Dunne and Damschroder references whether the references are considered together or separately.

The Dunne reference relates to a process for analyzing a selection of financial investments based upon a comparative analysis of performance and diversification. Dunne Abstract. In accordance with the principles of the invention of the Dunne reference, a multi-period analysis algorithm and performance data is used to calculate an annualized return that an investment would have earned in a possible sub-period or holding period between a fixed set of dates. Dunne ¶0062. In other words, an investment is analyzed by comparing its performance or earnings over many overlapping holding periods. Dunne ¶0069. The critical factor in Dunne is the percentage increase or decrease in the investment's value in a particular

time period, i.e. its performance. The Dunne reference discusses using only performance related data of an investment for comparison. Dunne ¶0072. Such performance related data includes a percentage periodic return or other measurements such as volatility or a Sharpe Ratio. Dunne ¶0073. By applying the investment's percentage increase or decrease in a time period over many overlapping holding periods, the Dunne reference states that the analysis (1) ensures short term aberrations do not dominate the comparative performance analysis of the investment (Dunne ¶0064); and (2) provides insight to the investor as to whether a specific investment has performed best over shorter or longer periods (Dunne ¶0071).

The Dunne reference does not disclose or suggest creating a system for rating financial investments which uses a composite or blended index generated by comparing a financial investment's expense ratio to an average expense ratio for an investment category and a financial investment's turnover rate to an average turnover rate for an investment category as recited by claims 2 and 14, as amended herein. The terms "turnover rate" and "expense ratio" as recited in the claims are not directly related to or thought of as return performance measurements of an investment. For instance, the Damschroder reference provides several definitions of terms commonly used in the art and defines "performance" as arithmetic or geometric return for a given period of time (Damschroder ¶170); "expense ratio" as the total cost associated with owning a security including transaction costs and fees (Damschroder ¶0178); and "turnover" as the rate at which new assets in a portfolio replace old assets (Damschroder ¶0174). Moreover, the index as recited in claims 2 and 14 is not normalized through its comparison over several overlapping holding or sub-periods as taught by Dunne. Because the Dunne reference fails to disclose or teach developing an index based upon an expense ratio and turnover rate or developing a percentile ranking based upon expense ratio and turnover rate, the claims are patentable over the Dunne reference.

The Damschroder reference fails to make up for the deficiencies already identified above with respect to the Dunne reference. The Damschroder reference is related to a method and

apparatus for creating a holistic representation of a portfolio. Damschroder Abstract. The three dimensional graph depicts diversification as symmetry. Damschroder Abstract. Assets are graphed on the basis of their relationship or correlation with other assets in a determined asset universe. Damschroder Abstract. The Damschroder reference is directed toward providing a graphical representation of an investor's portfolio to allow an investor to visually analyze the risk and return associated with certain investment assets in the portfolio. Damschroder ¶0003. The Damschroder reference uses correlation between investment assets as a predictor to determine a relative risk and return rather than performance and market returns. Damschroder ¶¶0029-0030. In this respect, the Damschroder reference teaches away from combination with the Dunne reference which relies strictly on market performance.

Damschroder relies upon the development of a relationship or correlation factor that measures how two or more assets in an asset universe can be expected to perform in a similar fashion. Damschroder ¶0114. The relation or correlation may have a distance and vector component derived from the relationship of at least two assets to each other. Damschroder ¶0189. The distance and vector components allow the assets to be plotted on a graph. Damschroder ¶0189. Thus, in the Damschroder reference, a financial investment is shown graphically by virtue of its relationship or correlation to another financial investment. Under the principles of the present invention, two assets are not analyzed for their relationship to each other, rather the assets are ranked independent of each other based upon the asset's individual blended index created from turnover and expense ratios.

The Damschroder reference suggests that the investor may select assets based on a turnover rate or expense ratio, or a combination of these factors, in order to create a portfolio to analyze. However, the Damschroder reference does not describe creating an index based upon an investment's turnover rate and average turnover rate and expense ratio and average expense ratio to create the portfolio. The Damschroder reference is concerned with analyzing the diversification and risk associated within the portfolio once it is created by graphing

correlations or relationships. The only paragraph in Damschroder relating to the selection process states:

> The use would then select assets based upon desired
> combination of values or ranges of these or other criteria. The
> screening selection methods can vary based on the user's risk
> preferences, market outlook, strategic and tax considerations.

Damschroder ¶0186. In contrast, the principles of the present invention relate to selecting funds to create a portfolio based upon a system that develops an index for ranking based upon turnover rate, average turnover rate, expense ratio and average expense ratio. Because the Damschroder reference is completely devoid of any teaching on how to select the asset universe and instead is concerned with determining the correlation between a given set of assets and plotting those assets to determine whether the asset portfolio has balanced risk and return, the claims are patentable over Damschroder.
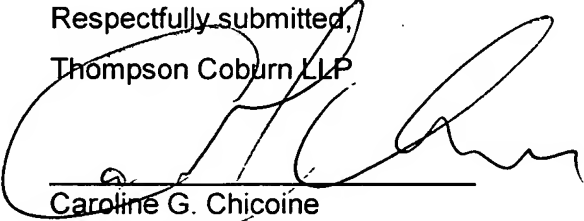
For all of these reasons, it is submitted that the Dunne and Damschroder references, whether considered together or alone, fail to show or suggest developing an index based upon turnover rate, expense ratio, and fund performance. For these reasons, it is submitted that claims 2-12 and 14-24 are patentable over these references.

CONCLUSION

In view of the foregoing amendments and remarks, it is submitted that the above-referenced application is in a condition for allowance and notification to that effect is earnestly solicited at the Examiner's earliest convenience. The Examiner is invited to contact the undersigned by telephone if any other matters require resolution prior to notification of allowance.

Respectfully submitted,

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